

KEYWORDS: General; waiver of indebtedness

DIGEST: An employee received voluntary separation incentive pay (VSIP) upon his resignation from federal employment. His debt arose when he accepted a new position in the federal government within five years of receiving VSIP. Because the payment of VSIP was proper when made, it cannot be considered for waiver.

CASENO: 05062101

DATE: 7/14/2005

DATE: July 14, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05062101

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee received voluntary separation incentive pay (VSIP) upon his resignation from federal employment. His debt arose when he accepted a new position in the federal government within five years of receiving VSIP. Because the payment of VSIP was proper when made, it cannot be considered for waiver.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 98092810, dated October 14, 1998, which held an employee's debt in the amount of \$16,491, could not be considered for waiver. The employee's debt arose when he accepted a position with the federal government within five years after receiving voluntary separation incentive pay (VSIP).

Background

The employee was employed by the Defense Contract Audit Agency (DCAA) until he resigned on September 24, 1994. At the time the employee received VSIP, Public Law 103-226, the Federal Workforce Restructuring Act of 1994, required an employee who resigned or retire from a defense agency with incentive pay on or after March 30, 1994, to

[\(1\)](#)

repay the VSIP if he accepted federal employment within five years.

The employee's application for VSIP did not mention the repayment requirement upon re-employment with the federal government within five years.⁽²⁾ However, the employee was advised that although he could not return to work within the Department of Defense (DoD), he could immediately seek employment with the federal government outside DoD.⁽³⁾ On November 3, 1997, the employee accepted a position with the Department of Justice. The employee thus became liable to repay VSIP since he returned to the federal government within five years after the date of his separation.

The employee requested waiver of the repayment of the VSIP. In the Settlement Certificate, the adjudicator concluded that since the VSIP payment was proper when made, it could not be considered for waiver.

On appeal, the member argues that the repayment of the VSIP should be waived because the VSIP was an erroneous payment. He states that VSIP is not an entitlement upon resignation but is an offer and application process governed by strict requirements. Thus, he states that his VSIP application should never have been approved because DCAA did not follow the requirement of including a statement of understanding of the re-employment restrictions.

Discussion

Our authority is restricted to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under 5 U.S.C. § 5584, we have the authority to waive claims of erroneous overpayments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. By definition, a payment must be erroneous when made if it is to be considered for waiver under 5.U.S.C. § 5584.

In this case, the employee did not receive an erroneous payment. The employee properly received VSIP upon his resignation. The fact that his agency failed to inform him of the five-year repayment requirement does not change the valid nature of the payment he received. Since there was no erroneous payment, there is no overpayment that is subject to waiver. In this circumstance, we have no authority to consider the employee's debt for waiver under 5 U.S.C. § 5584. *See* DOHA Claims Case No. 97111206 (January 12, 1998).

Further, the employee's argument concerning VSIP being an offer and application process governed by strict requirements does not change the outcome in this case under the waiver statute. The employment relationship between the Federal government and its employees is statutory, not contractual. Federal employees are appointed and serve in accordance with applicable statutes and regulations. They are entitled only to those benefits which are conferred by statute or regulation, and, therefore, the principles of contract law do not apply. *See Kizas v. Webster*, 707 F.2d 524, 535 (D.C. Cir. 1983); DOHA Claims Case No. 97111206, *supra*; and Comptroller General decisions 65 Comp. Gen 679 (1986) , 62 Comp. Gen. 171 (1983), 60 Comp. Gen. 71 (1980), and B-219273, Dec. 26, 1985 .

Conclusion

We affirm the Settlement Certificate.

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Michael D. Hipple
Chairman, Claims Appeals Board

